

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WALTER L. WYATT,

Plaintiff,

v.

CITY OF RICHLAND POLICE
DEPARTMENT & OFFICERS D.
CLARK, C. SMITH, J. TAYLOR,
BENTON COUNTY JUSTICE CENTER
& MEDICAL STAFF,

Defendants.

NO. CV-05-5013-EFS

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO COMPEL DISCOVERY,
GRANTING BENTON COUNTY'S
MOTION TO DISMISS AMENDED
COMPLAINT AND HOLDING IN
ABEYANCE PLAINTIFF'S MOTION TO
ADD DEFENDANTS NAMES TO
CAPTION OF THIS CASE**

BEFORE THE COURT, without oral argument, are Defendants City of Richland Police Department and Officers D. Clark, C. Smith, and J. Taylor's Motions to Compel Discovery (Ct. Rec. 17, 23, & 27), Benton County's Motion to Dismiss Amended Complaint (Ct. Rec. 19), and Plaintiff's Motion to Add Defendants Names to the Caption of this Case (Ct. Rec. 31). After reviewing the submitted material and relevant statutes, rules, and case law, the Court is fully informed. For the reasons given below, the Court grants in part and denies in part the motion to compel, grants the dismissal motion, and holds in abeyance Plaintiff's motion.

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1 **A. Defendants' Discovery Motions¹**

2 Defendants City of Richland Police Department and Officers D. Clark,
3 C. Smith, and J. Taylor ask the Court to order Plaintiff to fully respond
4 to Interrogatories and Requests for Production which were sent to
5 Plaintiff on June 22, 2005, specifically asking the Court to order
6 Plaintiff to supplement his response to Interrogatory Nos. 8, 11, and 18
7 and Request for Production No. 6. Plaintiff opposes the motion,
8 contending the requested information is not in his possession and/or is
9 irrelevant.

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11 ¹ Defendants initially filed a Motion to Compel Discovery (Ct. Rec.
12 17) on September 22, 2005, asking the Court to require Plaintiff to
13 respond to interrogatories and requests for production that were served
14 on Plaintiff. Thereafter, Plaintiff provided answers to the
15 interrogatories and requests for Production. Following, Defendants
16 revised their motion to compel (Ct. Rec. 23), requesting the Court to
17 order Plaintiff to fully answer Interrogatory Nos. 8, 11, and 17 and
18 Requests for Production Nos. 2 and 6. Plaintiff filed an opposition to
19 this motion, which, in pertinent part, clarified Plaintiff is not seeking
20 lost wages. As a result of Plaintiff's statement that he is not seeking
21 lost wages, Defendants filed a Second Amended Motion to Compel (Ct. Rec.
22 27) withdrawing its Request for Production No. 2, which sought a copy of
23 Plaintiff's income tax returns. Accordingly, the Second Amended Motion
24 to Compel is the motion Defendants ask the Court to act upon; therefore,
25 the Court denies as moot the previous two motions.
26

1 Interrogatory No. 8 requests Plaintiff to:

2 list all diseases, handicaps, illness, or ailments suffered by
3 you. For each condition, indicate the dates you have suffered
4 from the condition, the cause of the condition, the medications
5 taken for the condition, other treatment for the condition, the
6 physicians who diagnosed the condition, and the physicians who
7 treated the condition.

8 In response, Plaintiff answered, "I emailed my medical records to you."
9 Defendants contend the response is insufficient given that this response
10 does not guarantee that Defendants have all of the medical records and
11 the medical records do not address all of the questions raised in
12 Interrogatory No. 8. The Court finds the information requested in
13 Interrogatory No. 8 relevant given the nature of Plaintiff's claims. See
14 *Gatewood v. Stone Container Corp.*, 170 F.R.D. 455, 460 (S.D. Iowa 1996).
15 Plaintiff needs to ensure the medical records provided to Defendants
16 provide Defendants with the information requested by Interrogatory No.
17 8, and, to the extent the information needs supplementing, Plaintiff
18 shall obtain and submit, no later than December 12, 2005, the necessary
19 release forms to his medical providers in order to have such information
20 provided to defense counsel. Plaintiff must then fully answer
21 Interrogatory No. 8 by December 30, 2005. Defendants' motion is granted
22 in part.

23 Interrogatory No. 11 asks Plaintiff "[f]or each crime for which you
24 have been charged, provide the following: the date of the charge, the
25 nature of the charge, the court in which the charge was filed, and the
26 disposition of the charge." Plaintiff contends such information is
irrelevant. Plaintiff is correct in part. Under Federal Rule of
Evidence 609, a witness can be impeached based on a prior *conviction*, not
simply a charge. Interrogatory No. 11 is too broad; Plaintiff must

1 provide the information requested in Interrogatory No. 11 as to prior
2 convictions; but need not provide such information for charges for which
3 a conviction was not obtained. See *Schuurman v. Town of North Reading*,
4 139 F.R.D. 276, 277 (D. Mass. 1991). Plaintiff shall provide the
5 conviction-related information by December 30, 2005. Defendants' motion
6 is granted in part and denied in part.

7 Through Interrogatory No. 17, Defendants ask Plaintiff to disclose
8 "[w]hat mental health counseling you have received during the last ten
9 years. . . [P]lease indicate the nature of the counseling, the date of
10 the counseling, and the name, address and phone number of all
11 counselors." Plaintiff opposes this discovery request, maintaining it
12 seeks confidential information. The Court acknowledges that such
13 information is typically confidential. However, through this lawsuit,
14 Plaintiff appears to claim the conduct of Defendants caused him emotional
15 distress. If Plaintiff is claiming emotional distress damages,
16 Defendants are allowed to discover what mental health counseling
17 Plaintiff received during the last ten years in order to defend
18 Plaintiff's damages claim. See *Gatewood*, 170 F.R.D. at 460; *Tramm v.*
19 *Porter Mem'l Hosp.*, 128 F.R.D. 666, 668 (N.D. Ind. 1989). Similarly,
20 Plaintiff would then be required to answer Request for Production No. 6,
21 which seeks copies of Plaintiff's mental health counseling records. By
22 December 12, 2005, Plaintiff would need to complete and submit the proper
23 release forms to any mental health counselor Plaintiff visited during the
24 last ten years in order to provide a copy of such materials to defense
25 counsel. If Plaintiff is not seeking emotional distress damages,
26 Plaintiff may specify such in response to Interrogatory No. 17 and

1 Request for Production No. 6, and need not provide the requested
2 information. Regardless of the substance of Plaintiff's answer,
3 Plaintiff must answer Interrogatory No. 17 by December 30, 2005.

4 As set forth above, the Court grants in part and denies in part
5 Defendants' motion. To reiterate, Plaintiff must complete and submit the
6 necessary medical, and mental (if claiming emotional distress damages),
7 release forms by December 12, 2005. Plaintiff must make a copy of the
8 completed release form(s) prior to submitting to the medical or mental
9 facility and provide such copy to defense counsel by December 12, 2005.
10 Plaintiff shall have the medical and mental health providers send the
11 records directly to defense counsel; Plaintiff may wish to have a copy
12 of the records sent to himself as well. After Plaintiff reviews his copy
13 of the records, Plaintiff must serve defense counsel with the fully
14 answered Interrogatories no later than December 30, 2005.

15 **B. Defendant Benton County's Motion to Dismiss Amended Complaint &**
16 **Plaintiff's Motion to Add Defendants Names to the Caption of this Case**

17 Benton County seeks dismissal under a variety of theories; the Court
18 need not analyze the merits of Benton County's motion because Plaintiff
19 agreed to dismiss Benton County. Accordingly, due to Plaintiff's lack
20 of opposition, the Court grants Benton County's motion.

21 Through his own motion, Plaintiff asks the Court to allow him to add
22 the following individuals/entities to his complaint: Captain John Hodge,
23 Lieutenant Robert Guerrero, Sargent Paul Frazier, Inmate Health Services,
24 Dr. Adrian Heap, Registered Nurse Colleen Gutman, Inmate Health Services
25 staff, and Registered Nurse Kimmie Last Name Unknown ("LNU"). The Court
26 notes on March 2, 2005, it previously warned Mr. Wyatt that he must

1 identify the specific individuals he alleges are responsible for
2 violating the Eighth Amendment. (Ct. Rec. 6.) Thereafter, Plaintiff
3 filed an Amended Complaint (Ct. Rec. 7), which again failed to identify
4 specific individuals in connection with the Eighth Amendment claim.
5 However, the Court determined it was appropriate to give Plaintiff an
6 opportunity to conduct discovery in order to determine these
7 individual(s)' names and warned Plaintiff that if he wished to maintain
8 an Eighth Amendment cause of action he had to amend the complaint to add
9 the specific individuals. (Ct. Rec. 8.) Plaintiff now so moves. Given
10 that Plaintiff has had the opportunity to engage in discovery since June
11 16, 2005, the Court finds a deadline of December 9, 2005, for Plaintiff
12 to file a Second Amended Complaint is sufficient. This Second Amended
13 Complaint shall be complete and comply with the Local Rules and Federal
14 Rule of Civil Procedure 8, including a short and plain statement of the
15 claim(s) showing Plaintiff is entitled to relief against the listed
16 Defendants under an identifiable legal theory. The Court directs
17 Plaintiff to the March 2, 2005, Order for guidance as to what the legal
18 elements of an Eighth Amendment cause of action are. The Court will then
19 screen the Second Amended Complaint to determine if it should be served.

20 For the reasons given above, **IT IS HEREBY ORDERED:**

21 1. Defendants City of Richland Police Department and Officers D.
22 Clark, C. Smith, and J. Taylor's Second Revised Motion to Compel
23 Discovery (**Ct. Rec. 27**) is **GRANTED IN PART** (Interrogatory Nos. 8, 11
24 (convictions) & 17 and Request for Production No. 6) **AND DENIED IN PART**
25 (Interrogatory No. 11 (charges which did result in a conviction)).
26 Defendants' previously filed Motion to Compel Discovery (**Ct. Rec. 17**) and

1 Amended Motion to Compel Discovery (Ct. Rec. 23) are **DENIED AS MOOT**. As
2 **specified above, Plaintiff shall have the necessary release forms**
3 **submitted to the provider by December 12, 2005; and fully answer the**
4 **discovery requests by December 30, 2005.**

5 2. Benton County's Motion to Dismiss Amended Complaint (Ct. Rec.
6 **19)** is **GRANTED**. Benton County is hereby **DISMISSED** as a Defendant.

7 3. Plaintiffs' Motion to Add Defendants Names to the Caption of
8 this Case (Ct. Rec. 31) is **HELD IN ABEYANCE IN PART** (Plaintiff shall file
9 **a Second Amended Complaint no later than December 19, 2005, which the**
10 **Court will screen**). Plaintiff's motion will be heard, without oral
11 argument, on December 30, 2005.

12 **IT IS SO ORDERED.** The District Court Executive is directed to:

13 (A) Enter this Order;

14 (B) Provide a copy of the Order to counsel and Plaintiff.

15 **DATED** this 22nd day of November, 2005.

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17 S/ Edward F. Shea
18 EDWARD F. SHEA
United States District Judge

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